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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/899,303	07/06/2001	Geert Maertens	2752-52	3515

7590 11/05/2002
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Arlington, VA 22201-4714

EXAMINER

LI, BAO Q

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 11/05/2002

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/899,303

Applicant(s)

MAERTENS ET AL.

Examiner

Bao Qun Li

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 67-96 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 67-96 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Amendment of paper No. 10 filed on August 26, 2002 has been noted. Claims 95-96 are added. Claims 64-96 are pending.

Election/Restrictions

Amendment of paper No. 10 filed on August 26, 2002 has been noted. Claims 95-96 are added. Since Applicants amend the claims, claim 96 is grouped into the elected group II, whereas the claim 95 is regrouped into group II, further restriction is required as following:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

Upon election of Group I, Applicant is additionally required to elect a single expression vector as recited in the claim 87-91:

- ✓ A). The vector is an avipox vector, B). the vector is Ankara modified virus (AMV) vector, C). The vector is a baculovirus vector.

This requirement is not to be construed as a requirement for an election of species, since each of the expression vectors recited in alternative form is not a member of a single genus of invention, but constitutes an independent and patentably distinct invention. Each of the vectors has different genetic make-up and the search of each vector would be burdensome to search in both in house and commercial databases.

Furthermore, if any one of the vectors is selected applicant is further requested to select one antigen expressed by the vector as recited in claim 67 to be examined on the merits. This is not a species election because each of expressing vector comprising structural and functional different envelope protein of HCV are patentable distinct product.

- i). The vector comprising hetelogenous sequence of HCV E1.
- ii). The vector comprising hetelogenous sequence of HCV E2.
- iii). The vector comprising hetelogenous sequence of HCV E1/E2.

This application contains claims directed to the following patentably distinct species of the claimed invention:

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if group i) is selected applicant is further requested to select one antigen expressed by the vector as recited in claim 68-70 to be examined on the merits. This is a species.

- 1 — 4 0 5
- a). The E1 peptide starting in the region of 1-192 and ending at 250-400,
 - b). The E1 peptide starting in the region of 117-192 and ending at 263-400,
 - c). The E1 peptide starting in the region of 1-192 and ending at 25-400 bearing a modification in the positions of 264-293, plus and minus 8 amino acids.

if group ii) is selected applicant is further requested to select one antigen expressed by the vector as recited in claim 68-70 to be examined on the merits. This is a species election.

- 1). The E2 peptide starting at position of 290-406 and ending at amino acid position of 623,
- 2). The E2 peptide starting at position of 290-406 and ending at amino acid position of 650,
- 3). The E2 peptide starting at position of 290-406 and ending at amino acid position of 661,
- 4). The E2 peptide starting at position of 290-406 and ending at amino acid position of 673,
- 5). The E2 peptide starting at position of 290-406 and ending at amino acid position of 710,
- 6). The E2 peptide starting at position of 290-406 and ending at amino acid position of 715,
- 7). The E2 peptide starting at position of 290-406 and ending at amino acid position of 720,
- 8). The E2 peptide starting at position of 290-406 and ending at amino acid position of 746,
- 9). The E2 peptide starting at position of 290-406 and ending at amino acid position of 809.

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If group I is selected applicant is further requested to select one antigen expressed by the vector as recited in claim 96, which is corresponding to the elected species cited in the claims 68-72 to be examined on the merits. This is a species election.

- 1a). HCV envelope protein carried by the vector is SEQ NO: 3,
- 2b). HCV envelope protein carried by the vector is SEQ NO: 5,
- 3c). HCV envelope protein carried by the vector is SEQ NO: 7.
- 4d). HCV envelope protein carried by the vector is SEQ NO: 9,
- 5e). HCV envelope protein carried by the vector is SEQ NO: 11,
- 6f). HCV envelope protein carried by the vector is SEQ NO: 13,
- 7g). HCV envelope protein carried by the vector is SEQ NO: 21,
- 8h). HCV envelope protein carried by the vector is SEQ NO: 23,
- 9i). HCV envelope protein carried by the vector is SEQ NO: 25,
- 10j). HCV envelope protein carried by the vector is SEQ NO: 27,
- 11k). HCV envelope protein carried by the vector is SEQ NO: 29,
- 12l). HCV envelope protein carried by the vector is SEQ NO: 30.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 67 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to

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be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

1. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bao Qun Li whose telephone number is 703-305-1695. The examiner can normally be reached on 8:00 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 703-308-4027. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Bao Qun Li

October 30, 2002


JAMES HOUSEL 11/3/02
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600